

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Time Warner Cable Inc. Petition for) MB Docket No. 10-215
Declaratory Ruling Regarding Negative Option)
Billing Restrictions)

COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. (“Cox”), pursuant to the invitation extended by the Federal Communications Commission (“FCC” or “Commission”),^{1/} hereby submits these comments in support of the Petition for a Declaratory Ruling Regarding Negative Option Billing Restrictions submitted by Time Warner Cable Inc. (“TWC”) (the “Petition”).^{2/} The Commission should promptly grant the Petition and clarify that the negative option billing restriction does not require cable operators to impose burdensome, redundant procedures upon consumers wishing to order cable service. This common-sense clarification of the negative option billing rules is necessary to provide consumers, cable operators, and the courts with clarity about what the rules require.

I. Introduction and Background

As the Petition notes, the negative option billing restriction provides that “a cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name.”^{3/} According to the FCC, this section is designed to ensure

^{1/} *Comment Dates Established for Time Warner Cable Inc. Petition for a Declaratory Ruling Regarding Negative Option Billing Restrictions of Section 623(f) of the Communications Act and the FCC’s Rules and Policies*, Public Notice, DA 10-2013 (rel. Oct. 20, 2010).

^{2/} Time Warner Cable Inc. Petition for Declaratory Ruling Regarding Negative Option Billing Restrictions, MB Docket No. 10-215 (filed Oct. 7, 2010).

^{3/} 47 U.S.C. § 543(f); 47 C.F.R. § 76.981; Petition at 4.

“that subscribers not be billed for services that they never ordered.”^{4/} Plaintiffs in the TWC lawsuit argue that TWC violated this restriction by not requiring consumers requesting cable services to itemize affirmatively each component of the equipment and services they wish to receive. In contrast, TWC correctly asserts that by discussing each consumer’s options and choice of cable service, equipment, and charges, and then receiving the consumer’s affirmative assent regarding the mix of cable services and equipment to be provided, TWC has complied with the Commission’s rules.

Cox is currently being forced to defend the same type of class action lawsuit as TWC in California.^{5/} Like the lawsuit against TWC, the lawsuit against Cox alleges that Cox’s routine ordering procedures run afoul of the Commission’s negative option billing prohibition—and therefore amount to an unlawful business practice under California state law—because Cox’s ordering procedures do not require customers to recite back to Cox the name of each item of equipment that they would like to receive. This practice would irritate and confuse customers rather than protect them, precisely the opposite effect of the law’s intent. Cox agrees with TWC that the FCC should take action to ensure that consumers do not become subject to the onerous cable ordering procedures suggested by the plaintiffs in these class actions.

II. The Commission Should Grant TWC’s Petition Without Delay

The reading of the negative option billing restriction suggested by the plaintiffs in these cases would subject consumers to cumbersome, unnecessary cable ordering procedures without enhancing consumer protections in any way. Cox distinguishes itself competitively with its high

^{4/} See, e.g., *Warner Cable Communications, Milwaukee, Wisconsin*, Memorandum Opinion and Order, 10 FCC Rcd 2103, ¶ 13 (1995); see also Petition at 5-6.

^{5/} *Cottle-Banks v. Cox Commc’ns, Inc.*, filed Sept. 13, 2010 in the Superior Court of the State of California, County of San Diego, Case No. 37-2010-00100195-CU-BT-CTL. See Exhibit A attached hereto.

quality customer service, and the plaintiffs’ reading of the negative option billing rules would undermine the customer experience. Cox’s ordering process is designed to present customers with clear choices and reliable provisioning. Currently, when a consumer calls Cox to order cable service, Cox customer service representatives assess the consumer’s needs, discuss the various options for cable services and equipment—including pricing and specific equipment—with the consumer, and draft a work order capturing the consumer’s choices. The representative also reviews expectations for the first bill before closing the call. The consumer is offered a second opportunity to confirm his or her choices at the time of installation, when he or she is presented with the work order. At that point, the consumer may review and approve via signature the list of services and equipment ordered as well as all applicable charges.

These procedures clearly comply with the negative option billing rules by requiring the customer to assent to the cable services, equipment, and charges not only once but twice during the ordering process—once at the time of the order and once at the time of installation. But the plaintiffs in the lawsuit contend that, in addition to these procedures, the consumer should be required to recite back to the cable operator by name each and every item of equipment included in a particular package or order. Such an inflexible reading of the negative option billing restriction runs contrary to the pro-consumer intent of the rule by placing additional unnecessary burdens on the consumer during the ordering process—particularly when there is no evidence of any kind that consumers are being misled.

Further, the rigid approach proposed by plaintiffs in these class action suits “would undermine the goals of the Commission and Congress to implement a practical and consumer-friendly approach in applying the prohibition on negative option billing practices.”^{6/} As

^{6/} Petition at 9.

described in the Petition,^{7/} the Commission has adopted a realistic, common-sense reading of the negative option billing prohibition, finding, for example, that cable operators do not run afoul of the negative option billing restriction when they add, delete, or replace channels,^{8/} change service packages,^{9/} or unbundle remote control charges.^{10/}

As the expert agency, the FCC should determine the scope of the negative option billing prohibition to ensure that the prohibition is applied in a uniform fashion.^{11/} FCC guidance will ensure that cable operators are not subject to conflicting interpretations of the negative option billing rule in different jurisdictions and are not subject to additional burdensome ordering procedure requirements not imposed on non-cable competitors.^{12/}

Cox agrees with TWC that the FCC should clarify this issue on an expedited basis. The Petition notes that expedited action is warranted “to ensure that the issue does not unnecessarily recur in other jurisdictions.”^{13/} Unfortunately, this issue is already recurring in other jurisdictions as evidenced by the copycat lawsuit filed against Cox. Providing much-needed clarification of this rule would put an end to costly litigation or, at the very least, focus the issues before the courts.^{14/}

^{7/} Petition at 18-19.

^{8/} *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking, 10 FCC Rcd 1226, ¶ 13 (1994).

^{9/} *See, e.g., ML Media Partners, L.P.*, Memorandum Opinion and Order, 11 FCC Rcd 9216, ¶ 10 (1996).

^{10/} *Paragon Cable, Irving, TX*, Memorandum Opinion and Order, 10 FCC Rcd 6012 (1995).

^{11/} *See* Petition at 20-21.

^{12/} *Id.*; *see also* 47 C.F.R. § 76.981(c).

^{13/} Petition at 26.

^{14/} *See* Petition at 25.

III. Conclusion

Cox urges the Commission to clarify the scope of the negative option billing restriction. Adopting the view proffered by plaintiffs in the class action suits against TWC and Cox would unduly burden consumers wishing to order cable service, would constitute a departure from the Commission's well-established pragmatic approach in applying this restriction, would subject cable operators to different interpretations of the restriction in different jurisdictions, would create a competitive disadvantage for cable operators, and would encourage unnecessary litigation. Accordingly, Cox respectfully requests that the Commission grant TWC's Petition in its entirety without delay.

Respectfully submitted,

COX COMMUNICATIONS, INC.

/s/ Robert G. Kidwell

Robert G. Kidwell

Jennifer A. Cukier

MINTZ, LEVIN, COHN, FERRIS,

GLOVSKY AND POPEO, P.C.

701 Pennsylvania Avenue, N.W.

Suite 900

Washington, D.C. 20004

(202) 434-7300

Counsel for Cox Communications, Inc.

November 9, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of November, 2010, I caused a true copy of the foregoing Comments to be served as shown upon:

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554
Via ECFS

Sonia Greenaway-Mickle
Media Bureau
Federal Communications Commission
445 12th Street S.W.
Room 4-A813
Washington, D.C. 20554
sgreenaw@fcc.gov
Via E-Mail

Best Copy and Printing, Inc.
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445 12th Street S.W.
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fcc@bcpiweb.com
Via E-Mail

/s/ Jennifer A. Cukier
Jennifer A. Cukier

EXHIBIT A

**Court Summons and Complaint in Case Filed Against Cox Communications, Inc. Alleging
Violation of the Negative Option Billing Prohibition**

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

COX COMMUNICATIONS, INC., a Delaware Corporation; and DOES
1 through 100, inclusive,

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

BRITTNI COTTLE-BANKS, an individual, on behalf of herself and all
others similarly situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
Clerk of the Superior Court

SEP 15 2010

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto al desear que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of California, County of San Diego
330 West Broadway, San Diego, CA 92101

CASE NUMBER:
(Número del Caso):

37-2010-00100105-CL-BT-CT

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Sabrina S. Kim, Milberg LLP, 300 S. Grand Avenue, Suite 3900, Los Angeles, CA 90071 (213) 617-1200

DATE:

(Fecha) SEP 15 2010

Clerk, by

(Secretario) CAROL McMAHON

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify):
COX COMMUNICATIONS, INC., a
Delaware Corporation
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Sabrina S. Kim (SBN 186242) Milberg LLP 300 South Grand Avenue, Suite 3900 Los Angeles, California 90071 TELEPHONE NO.: (213) 617-1200 FAX NO.: (213) 617-1975		<div style="font-size: 1.2em; font-weight: bold;">F I L E C M - 11</div> <div style="font-size: 0.8em; font-weight: bold;">FOR CIVIL SUPERIOR COURT</div> <div style="font-size: 1.5em; font-weight: bold; margin-top: 20px;">SEP 13 2010</div> <div style="font-size: 1.5em; font-weight: bold; margin-top: 20px;">TAXED</div>
ATTORNEY FOR <u>Plaintiff</u> : Plaintiff Brittni Cottle-Banks		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 220 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central		
CASE NAME: Cottle-Banks v. Cox Communications		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
CASE NUMBER: 37-2010-00100195-CU-BT-CTL		JUDGE: DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/PPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/PPD/WD (23) Non-P/PPD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/PPD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (08) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): **1 - Unlawful Business Practices**

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **September 13, 2010**

Sabrina S. Kim

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 37-2010-00100185-CU-BT-CTL

CASE TITLE: COTTLE-BANKS vs. COX COMMUNICATIONS INC

NOTICE TO LITIGANTS/ADR INFORMATION PACKAGE

You are required to serve a copy of this Notice to Litigants/ADR Information Package and a copy of the blank Stipulation to Alternative Dispute Resolution Process (received from the Civil Business Office at the time of filing) with a copy of the Summons and Complaint on all defendants in accordance with San Diego Superior Court Rule 2.1.5, Division II and CRC Rule 201.9.

ADR POLICY

It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR – i.e. the court's mediation or arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

ADR OPTIONS

1) CIVIL MEDIATION PROGRAM: The San Diego Superior Court Civil Mediation Program is designed to assist parties with the early resolution of their dispute. All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participate in the program. Limited civil collection cases are not eligible at this time. San Diego Superior Court Local Rule 2.31, Division II addresses this program specifically. Mediation is a non-binding process in which a trained mediator 1) facilitates communication between disputants, and 2) assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities. The mediator is not the decision-maker and will not resolve the dispute – the parties do. Mediation is a flexible, informal and confidential process that is less stressful than a formalized trial. It can also save time and money, allow for greater client participation and allow for more flexibility in creating a resolution.

Assignment to Mediation, Cost and Timelines: Parties may stipulate to mediation at any time up to the CMC or may stipulate to mediation at the CMC. Mediator fees and expenses are split equally by the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to the court's payment schedule for county-referred mediation: \$150.00 per hour for each of the first two hours and their individual rate per hour thereafter. Parties may select any mediator, however, the court maintains a panel of court-approved mediators who have satisfied panel requirements and who must adhere to ethical standards. All court-approved mediator fees and other policies are listed in the Mediator Directory at each court location to assist parties with selection. **Discovery:** Parties do not need to conduct full discovery in the case before mediation is considered, utilized or referred. **Attendance at Mediation:** Trial counsel, parties and all persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause.

2) JUDICIAL ARBITRATION: Judicial Arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The arbitrator's award may either become the judgment in the case if all parties accept or if no trial de novo is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date.

Assignment to Arbitration, Cost and Timelines: Parties may stipulate to binding or non-binding judicial arbitration or the judge may order the matter to arbitration at the case management conference, held approximately 150 days after filing, if a case is valued at under \$50,000 and is "at issue". The court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. In addition, if parties select an arbitrator from the court's panel, the court will pay the arbitrator's fees. Superior Court Local Rules Division II Chapter 3 and Code of Civil Procedure 1141 et seq. address this program specifically.

3) SETTLEMENT CONFERENCES: The goal of a settlement conference is to assist the parties in their efforts to negotiate a settlement of all or part of the dispute. Parties may, at any time, request a settlement conference before the Judge assigned to their case; request another assigned judge or a pro tem to act as settlement officer; or may privately utilize the services of a retired judge. The court may also order a case to a mandatory settlement conference prior to trial before the court's assigned Settlement Conference judge.

4) OTHER VOLUNTARY ADR: Parties may voluntarily stipulate to private ADR options outside the court system including private binding arbitration, private early neutral evaluation or private judging at any time by completing the "Stipulation to Alternative Dispute Resolution Process" which is included in this ADR package. Parties may also utilize mediation services offered by programs that are partially funded by the county's Dispute Resolution Programs Act. These services are available at no cost or on a sliding scale based on need. For a list of approved DRPA providers, please contact the County's DRPA program office at (819) 238-2400.

ADDITIONAL ADR INFORMATION: For more information about the Civil Mediation Program, please contact the Civil Mediation Department at (619) 515-8908. For more information about the Judicial Arbitration Program, please contact the Arbitration Office at (619) 531-3818. For more information about Settlement Conferences, please contact the Independent Calendar department to which your case is assigned. Please note that staff can only discuss ADR options and cannot give legal advice.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	FOR COURT USE ONLY
PLAINTIFF(S): BRITTON COTTLE-BANKS	
DEFENDANT(S): COX COMMUNICATIONS INC	
SHORT TITLE: COTTLE-BANKS VS. COX COMMUNICATIONS INC	
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION PROCESS (CRC 3.221)	CASE NUMBER: 37-2010-00100195-CU-BT-CTL

Judge: Joel M. Pressman

Department: C-66

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management time-lines.

- | | |
|---|---|
| <input type="checkbox"/> Court-Refered Mediation Program | <input type="checkbox"/> Court-Ordered Nonbinding Arbitration |
| <input type="checkbox"/> Private Neutral Evaluation | <input type="checkbox"/> Court-Ordered Binding Arbitration (Stipulated) |
| <input type="checkbox"/> Private Mini-Trial | <input type="checkbox"/> Private Reference to General Referee |
| <input type="checkbox"/> Private Summary Jury Trial | <input type="checkbox"/> Private Reference to Judge |
| <input type="checkbox"/> Private Settlement Conference with Private Neutral | <input type="checkbox"/> Private Binding Arbitration |
| <input type="checkbox"/> Other (specify): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate: (mediation & arbitration only) _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

(Attach another sheet if additional names are necessary). It is the duty of the parties to notify the court of any settlement pursuant to California Rules of Court, 3.1385. Upon notification of the settlement the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court and all un-served, non-appearing or actions by names parties are dismissed.

IT IS SO ORDERED.

Dated: 09/15/2010

JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 830 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7066	
PLAINTIFF(S) / PETITIONER(S): BRITTNI COTTLE-BANKS	
DEFENDANT(S) / RESPONDENT(S): COX COMMUNICATIONS INC	
COTTLE-BANKS VS. COX COMMUNICATIONS INC	
NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2010-00100195-CU-BT-CTL

Judge: Joel M. Pressman

Department: C-66

COMPLAINT/PETITION FILED: 09/13/2010

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 FOR THE COUNTY OF SAN DIEGO

16 BRITTNI COTTLE-BANKS, an individual, on
17 behalf of herself and of all others similarly
situated,

18 Plaintiff,

19 vs.

20 COX COMMUNICATIONS, INC., a Delaware
21 Corporation; and DOES 1 through 100,
inclusive,

22 Defendants.
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CASE NO.: 37-2010-00100185-CU-BT-CTL

CLASS ACTION

COMPLAINT FOR RESTITUTION AND
INJUNCTIVE RELIEF FOR UNLAWFUL
BUSINESS PRACTICES (California Business
& Professions Code, Section 17200)

DEMAND FOR JURY TRIAL

COMPLAINT

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1 Comes now Plaintiff BRITTNI COTTLE-BANKS, individually and on behalf of all others
2 similarly situated, and for causes of action against Defendants and each of them, alleges as
3 follows:

4 **INTRODUCTION**

5 1. This complaint involves a representative action for restitution and injunctive
6 relief, and is brought by an individual on behalf of herself and on behalf of all other persons who,
7 at any time between September 13, 2006, and the present, paid a rental fee to Defendant COX
8 COMMUNICATIONS, INC. ("CCI" or "Defendant") for the use of a cable television converter
9 box and/or remote control device which they did not affirmatively request by name in connection
10 with cable television service they received within the state of California.

11 2. Defendant CCI provides, among other things, cable television service to
12 consumers throughout the state of California.

13 3. As part of CCI's cable television service, CCI offers different levels of service,
14 including premium channels such as HBO and Cinemax, as well as Basic and/or Standard Cable
15 service.

16 4. CCI charges its customers a rental fee for the use of converter boxes and/or
17 remote control devices that customers do not affirmatively request by name.

18 5. CCI's practice of charging customers for converter boxes and/or remote control
19 devices which they did not affirmatively request by name is unfair, deceptive, and in violation of
20 California and federal law as pled more fully herein.

21 6. CCI's failure to obtain affirmative requests by name for a cable converter box
22 and/or remote control device, prior to charging for such equipment violates the Cable Television
23 Consumer Protection and Competition Act of 1992, 47 U.S.C. § 543(f) ("Cable Act").

24 7. Pursuant to California Business and Professions Code § 17200, *et seq.*, CCI's
25 violation of the Cable Act constitutes an unlawful business practice.

26 **PARTIES**

27 8. Plaintiff BRITTNI COTTLE-BANKS ("COTTLE-BANKS" or "Plaintiff") is, and
28 at all times relevant hereto has been, an individual and a resident of San Diego County,

1 California. COTTLE-BANKS paid a rental fee to CCI for the use of a cable television converter
2 box and remote control device within the state of California which she did not affirmatively
3 request by name.

4 9. Defendant CCI is a Delaware Corporation, headquartered in Atlanta, Georgia, and
5 authorized to do business in California. Plaintiff is informed and believes, and on that basis
6 alleges, that CCI provides cable television service to over 100,000 consumers in the state of
7 California, and thus has sufficient contacts with California for this Court to exercise jurisdiction
8 over it.

9 10. The true names and capacities of the defendants named herein as DOES 1 through
10 100, inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiff
11 who therefore sues such defendants under fictitious names pursuant to California Code of Civil
12 Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that these
13 defendants, DOES 1 through 100, are in some manner or capacity, and to some degree, legally
14 responsible and liable for the damages of which Plaintiff complains. Plaintiff will seek leave of
15 Court to amend this Complaint to set forth the true names and capacities of all fictitiously-named
16 defendants within a reasonable time after they become known.

17 **JURISDICTION AND VENUE**

18 11. This is a civil action brought under and pursuant to California Business &
19 Professions Code § 17200, *et seq.* ("UCL").

20 12. This Court has jurisdiction over this action pursuant to California Code of Civil
21 Procedure § 410.10.

22 13. The violations of law alleged in this complaint occurred in San Diego county and
23 elsewhere in California. This Court has jurisdiction over CCI because it is a corporation that is
24 authorized to conduct, and in fact does conduct, substantial business in the State of California,
25 has sufficient minimum contacts with this state, and otherwise purposely avails itself of the
26 markets in this state, through the promotion, sale, marketing, and distribution of its services and
27 products in the state, so as to render the exercise of jurisdiction by California courts permissible
28 under traditional notions of fair play and substantial justice.

14. The monetary relief which Plaintiff seeks is in excess of the jurisdictional minimum required by this Court and will be established according to proof at trial.

15. Venue is proper in this Court pursuant to California Code of Civil Procedure §§ 395 and 395.5 because the unlawful and unfair business practices at issue were performed and/or engaged in within the county of San Diego, California.

16. Plaintiff is informed and believes, and on that basis alleges, that Defendants CCI and DOES 1 through 100, and each of them, have sufficient contacts with the state of California for this Court to exercise jurisdiction over them.

FACTUAL ALLEGATIONS

17. COTTLE-BANKS began receiving cable television service from CCI in San Diego County, California in 2008.

18. COTTLE-BANKS paid a rental fee to CCI for the use of one or more converter boxes and remote control devices.

19. At the time of installation of her cable television service and equipment, CCI installed one or more converter boxes to COTTLE-BANKS' television(s) and left her with one remote control device for each converter box.

20. COTTLE-BANKS never affirmatively requested by name either a converter box or a remote control device from CCI.

21. Plaintiff is informed and believes, and on that basis alleges, that Defendant provides, and has provided, cable television service to over 100,000 persons throughout the state of California at some time during the Class Period.

22. Plaintiff is further informed and believes, and on that basis alleges, that Defendant has charged a significant portion of its cable television service customers monthly rental fees for use of one or more cable converter boxes and/or remote control devices, despite the fact that most, if not all, of those customers never affirmatively requested either device by name from Defendant.

23. Plaintiff is informed and believes, and on that basis alleges, that by virtue of Defendant's unlawful and unfair business practices alleged herein, Defendant has received

1 substantial sums of money, and has realized profits from those unlawful and unfair practices
2 since September 13, 2006. Specifically, CCI charges its cable television service customers a
3 monthly rental fee for a cable converter box and/or a remote control device which customers
4 never affirmatively requested by name.

5 24. The relief sought in this action is necessary to restore to Plaintiff and to members
6 of the proposed Class the money which Defendant has illegally acquired through the unlawful
7 and unfair treatment of Plaintiff and each member of the Class as described herein. Plaintiff and
8 all Class Members are entitled to restitution of all amounts paid by such persons to CCI
9 throughout the relevant Class Period for the rental of a cable converter box and/or remote control
10 device which they did not affirmatively request by name. In addition, Plaintiff is entitled to an
11 injunction permanently enjoining Defendant from committing the unlawful conduct alleged
12 herein.

13 CLASS ACTION ALLEGATIONS

14 25. Plaintiff brings this action on behalf of herself and on behalf of all other persons
15 similarly situated as a class action pursuant to California Code of Civil Procedure § 382, namely
16 each and every person who, at any time during the period from September 13, 2006, to the
17 present ("Class Period"), paid a rental fee to CCI for the use of a cable television converter box
18 and/or remote control device which they did not affirmatively request by name in connection
19 with cable television service they received within the state of California.

20 26. The class in this action may be defined as: "All persons who, at any time from
21 September 13, 2006, to the present, paid a rental fee to CCI for the use of a cable television
22 converter box and/or remote control device which they did not affirmatively request by name in
23 connection with cable television service they received within the state of California" (the
24 "Class").

25 27. Plaintiff is a member of the Class.

26 28. The number of persons in the Class is so numerous that joinder of all such persons
27 would be impracticable. While the exact number and identities of all such persons are unknown
28

1 to Plaintiff at this time, and can only be obtained through appropriate discovery, Plaintiff is
2 informed and believes, and on that basis alleges, that the Class includes over 100,000 persons.

3 29. Disposition of Plaintiff's claims in a class action will be of benefit to all parties
4 and to the Court.

5 30. There is a well-defined community of interest presented by the Class in that,
6 among other things, each member of the Class has an interest in obtaining appropriate legal relief
7 for the harm of which Plaintiff complains, and obtaining other adequate compensation for the
8 common injuries which Plaintiff and all Class Members have suffered as a result of Defendant's
9 actions.

10 31. A class action in this case is superior to any other available method for the fair
11 and efficient adjudication of the claims presented herein. Proof of a common or single set of
12 facts will establish the right of each Class Member to recover. Further, Plaintiff is informed and
13 believes, and on that basis alleges, that the individual claims of each Class Member are so small
14 that, but for a class action, such claims will go unprosecuted. Consequently, this class action is
15 in the public interest and in the interests of justice.

16 32. The prosecution of separate actions by individual Class Members would create a
17 risk of inconsistent and/or varying adjudications with respect to individual Class Members which
18 would or may establish incompatible standards of conduct for Defendant.

19 33. The prosecution of separate actions by individual Class Members would also
20 create a risk of adjudications with respect to individual Class Members which would, as a
21 practical matter, be dispositive of the interests of other Class Members not parties to the
22 particular individual adjudications, and/or would or may substantially impede or impair the
23 ability of those other members to protect their interests.

24 34. Common questions of fact and law exist in this case with respect to the Class
25 which predominate over any questions affecting only individual Class Members and which do
26 not vary between Class Members.

27 35. The common questions of fact involved in this case include, without limitation:
28 whether Class Members received cable television service from CCI at any time during the

1 relevant Class Period; whether Class Members paid a rental fee to CCI for the use of a converter
2 box and/or remote control device during the relevant Class Period; and whether CCI requires
3 customers to affirmatively request a cable box and/or remote by name before charging them for
4 such items.

5 36. The common questions of law involved in this case include, without limitation:
6 whether the imposition of a rental fee for cable converter boxes and/or remote control devices by
7 CCI which Class Members did not affirmatively request by name is unlawful and/or unfair in
8 violation of the UCL; and whether Class Members who paid a rental fee to CCI for the use of a
9 cable converter box and/or remote control device which they did not affirmatively request by
10 name are entitled to restitution of those monies from CCI.

11 37. Plaintiff and each Class Member have been injured economically as a result of a
12 common course of conduct engaged in by Defendant as complained of herein.

13 38. The claims of the named Plaintiff in this case are typical of those of all other
14 Class Members, in that, among other things, during the Class Period Plaintiff paid CCI rental
15 fees for one or more cable converter boxes and/or remote control devices which she did not
16 affirmatively request by name.

17 39. The claims of the named Plaintiff are coincident with, and not antagonistic to, the
18 claims of the other Class Members whom she seeks to represent.

19 40. The named Plaintiff will fairly and adequately represent and protect the interests
20 of the Class Members whom she seeks to represent. Plaintiff does not have any interests which
21 are antagonistic to the interests of the proposed Class.

22 41. Counsel for Plaintiff are experienced, qualified and fully able to conduct complex
23 class action litigation.

24 **CAUSE OF ACTION**
25 **CLAIM FOR UNLAWFUL BUSINESS PRACTICES**
26 **(California Business & Professions Code § 17200, *et seq.*)**
27 **(By Plaintiff on behalf of herself and all other Class Members against All Defendants)**

28 42. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
paragraphs 1 through 41 of this Complaint.

1 43. Since September 13, 2006, and at all times relevant hereto, by and through the
2 conduct described herein, Defendant has engaged in unfair, unlawful and/or fraudulent business
3 practices, in violation of California Business and Professions Code § 17200, *et seq.*, and has
4 thereby deprived Plaintiff and all Class Members of money, and fundamental rights and
5 privileges guaranteed to all consumers under California law.

6 44. The acts and conduct of Defendant complained of herein constitute unlawful,
7 unfair and/or fraudulent business practices and/or acts, including, without limitation, the practice
8 of charging Class Members rental fees for use of a cable converter box and/or remote control
9 device which those Class Members did not affirmatively request by name.

10 45. At all times relevant to this Complaint, the Cable Act, 47 U.S.C. § 543(f), has been
11 in full force and effect, and provides: "A cable operator shall not charge a subscriber for any
12 service or equipment that the subscriber has not affirmatively requested by name. For purposes
13 of this subsection, a subscriber's failure to refuse a cable operator's proposal to provide such
14 service or equipment shall not be deemed to be an affirmative request for such service or
15 equipment."

16 46. CCI charged Plaintiff and each Class Member for a cable converter box and/or
17 remote control device that they did not affirmatively request by name.

18 47. Defendant's failure to obtain any Class Member's affirmative request by name for
19 a cable converter box and/or remote control device, prior to charging Class Members for such
20 equipment, violates the Cable Act. Defendant's violation of the Cable Act constitutes an
21 unlawful business practice in violation of the UCL.

22 48. As a result of Defendant's unfair, unlawful and/or fraudulent business practices,
23 Plaintiff and all Class Members have lost money, namely all amounts paid by Plaintiff and such
24 Class Members for rental of equipment they did not affirmatively request by name.

25 49. All of the acts described herein are unlawful and in violation of public policy, and
26 in addition, are immoral, unethical, oppressive, fraudulent and/or unscrupulous, and thereby
27 constitute unfair, unlawful and/or fraudulent business practices in violation of the UCL.

28

1 I. For such other and further relief as this Court may deem just and appropriate.

2 **JURY DEMAND**

3 Plaintiff hereby demands a trial by jury.

4 DATED: September 13, 2010

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